IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6016 of 1999

HON'BLE MR JUSTICE KS JHAVERI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT STATE FINANCIAL CORPORATION - Petitioner(s)

Versus

ANWAR HUSSAIN ALLARKHA C/O MR KATHADIA - Respondent(s)

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Appearance :

Mr. Varunk K. Patel for Mr. K.M. Patel for Petitioner.

MR YV SHAH for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 23/06/2005

ORAL JUDGMENT

1. The petitioner Corporation has challenged the judgement and award of the Labour Court, Rajkot dated 28th April 1999 whereby the Labour Court directed the petitioner to reinstate the respondent workman with continuity of service without backwages.

2. According to the petitioner, the respondent workman was appointed by stop gap arrangement as temporary driver for fixed tenure by issuing letters of appointment. As the arrangement of stop-gap appointment was not renewed after 30.1.1988, the respondent workman raised industrial dispute claiming reinstatement in service with backwages which was referred to Labour Court, Rajkot and numbered as Reference No.(LCR) 716/88. The Labour Court passed an award granting reinstatement to the respondent with continuity of service without backwages which led to filing of the present petition.

3. Mr. Patel for the petitioner Corporation contended that the petitioner was appointed only for a limited period and therefore would not attract the provisions of section 25-F and the same will be governed by section 2(oo)(bb) of the Act. The said contention is reflected in para 4 of the impugned judgement. He contended that in spite of that without deciding the said issue the Labour Court has termed it as retrenchment and has granted reinstatement. He further contended that since there is no question of retrenchment, the question of following procedure under sections 25-G and 25-F does not arise.

4. Mr. Patel has relied upon a decision of the Supreme Court in the case of Allahabad Bank vs. Prem Singh, reported in (1996)10 SCC 597 wherein it is held that in the case of temporary appointment under different letters for one day or two, making a total of four continuous days, the service stood terminated at the end of the period specified in the appointment letter. In this regard he has specifically relied upon para 9 of the said decision. The said para reads as under:

“9. This is not a case where by passing any order the existing services of a workman were terminated. The respondent was given employment for one day at a time with the issuance of successive letters. The relationship between the parties being contractual, the term of the contract was that the services stood terminated at the end of the day. The Tribunal has not given any reason whatsoever as to what was the obligation on the appellant to employ the respondent. The status of the respondent was, at best, that of a daily wager. By virtue of his letters of employment he ceased to be employed at the end of each day. His day's service stood automatically terminated. This being so the decision of the Tribunal in holding that the respondent shall be deemed to have continued in service from 16-6-1997 and would also be entitled to usual pay and allowance is clearly untenable. The respondent could not insist on his being continued to be employed and the appellant was under no legal obligation to employ him.”

5. Mr. Patel has relied upon a decision in the case of Escorts Limited Vs. Presiding Officer and Another, reported in (1997)11 SCC 521. Para 4 of the said decision reads as under:

4. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Laobur Court, because, in our opoinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) in Section 2(oo) of the Act. Clause (bb) excludes from the ambit of the expression "retrenchment" as defined in the main part of Section 2(oo) "termination of the services of the workman as a result of the nonremoval of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein". The said provision has been considered by this Court in M. Venugopal V. Divisional Manager, LIC. The appellant in that case had been appointed on probation for a period of one year from 23.5.1984 to 22.5.1985 and the said period of probation was extended for further period of one year from 23.5.1985 to 22.5.1986. Before the expiry of the said period of probation, his services were terminated on 9.5.1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of Section 2(ii)(bb) of the Act and did not constitute retrenchment. Here also the services of the workman were terminated on 13.2.1987 as per the terms of the contract of employment contained in the appointment letter dated 9.1.1987 which enabled the appellant to terminate the services of the workman at any stage without assigning any reason. Since the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by sections 25-F and 25-G of the Act."

6. Mr. Patel has next relied upon a decision of the Kerala High Court in the case of Rajan Vs. Kerala State Electricity Board, reported in 1992 1 CLR 356 wherein it is held that workmen whose services are terminated under sub-clause (bb) of S.2(oo) are not retrenched workmen and they cannot claim any benefit under S.25-H of Industrial disputes Act.

7. Mr. Shah appearing for the respondent submitted that the petition is required to be rejected in view of the decision of this Court in the case of Surat Mahila Nagrik Sahakari Bank Ltd. vs. Mamtaben Mahendrabhai Joshi, reported in 2001 II CLR 505 wherein it has been held that the management cannot take the benefit of the nature of the tenure order as it may amount to unfair labour practice. Mr. Shah has next relied upon a decision of the Apex Court in the case of Malkapatnam, Krishna District, AP Vs. KBN Visweshwara Rao and others, reported in (1996)6 SCC 216 wherein the Court held that the persons who are in employment should be considered for filling up posts which are vacant. He submitted that in the present case the same was not considered and therefore the reinstatement of the respondent is just and proper. Mr. Shah has also relied upon a decision of the Apex Court in the case of Incharge Gov. Hide Flaying Centre Vs. Rama Ram and Another, reported in 2003 SCC (L&S) 1170 wherein it is held that the principle of

“Last come first go” should be applied.

8. Considering the definition of section 2(oo)(bb), it is clear that the respondent workman was employed for a fixed period and the provisions of section 2(oo)(bb) is squarely applicable to the facts of the present case. Therefore, the contention raised by the petitioner that it is not a retrenchment is required to be upheld. Therefore, I am of the view that the Labour Court has committed an error in holding that it was a retrenchment. If retrenchment is not there, then application of principles of section 25-H will not apply in view of the decision of the Apex Court in the case of Escorts Limited (supra).

9. In the premises aforesaid, the present petition is required to be allowed. Accordingly it is allowed. The impugned award of the Labour Court is quashed and set aside. Rule is made absolute accordingly with no order as to costs. However, it is observed that if an application is moved by the present respondent for consideration as and when any vacancy arises, the petitioner Corporation will consider the same along with other candidates.

[K.S. JHAVERI, J.]

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